


REQUEST FOR APPROVAL

To: Scott Walker, Deputy Director
Compliance and Enforcement Division

From: 
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Reviewed By: Steve Levine, Legal Office
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Subject: **APPROVAL OF THE SACRAMENTO RIVER, SAN JOAQUIN RIVER AND ASSOCIATED DELTA WATERWAYS CLEANUP PROJECT, SOLID WASTE DISPOSAL AND CODISPOSAL SITE CLEANUP PROGRAM (SOLID WASTE DISPOSAL TRUST FUND, FY 2011/12)**

Requested Action: Pursuant to the Solid Waste Disposal and Codisposal Site Cleanup Program (Program), Department of Resources Recycling and Recovery (CalRecycle) staff have completed an evaluation and recommend approval of the CalRecycle-managed cleanup of up to twelve illegal disposal sites containing abandoned and/or derelict vessels and other marine debris along the Sacramento River, San Joaquin River and associated waterways in the Delta. The estimated CalRecycle cost is \$600,000. Six to seven of the twelve sites can be completed without assistance from federal agencies, while an additional five to six sites will be completed if and when federal assistance is provided.

Time Factor: Decision required no later than October 14, 2011.

Options: The Deputy Director may decide to:

1. Approve the proposed project;
2. Disapprove the project; or
3. Direct staff to provide additional information and bring the project back for future consideration.

Recommendation: Staff recommend Option 1.

Abandoned Vessels Background: Abandoned and derelict vessels and related marine debris are a pervasive environmental and public safety problem in coastal and inland waterways of California. The value of vessels decreases with age while the cost of maintaining the vessel in operating condition and the costs of storing or docking the vessels increase. The result is that vessel owners are sometimes unable to pay or decide not to pay to properly operate, maintain, and store their vessels. The cost to correctly destroy a vessel can exceed \$500 for just small vessels and increases significantly for larger commercial vessels with possible hazardous substances. Vessel owners sometimes illegally abandon the vessels by leaving them at berths or docks while failing to pay the storage costs; running the vessels aground on the shores of public waterways; or sinking the vessels in public waterways.

Abandoned and derelict vessels are threats to public health and safety and the environment in communities along California's coastal and inland waterways. Abandoned vessels can impact water quality due to hazardous pollutants they contain, including oil, fuel, antifreeze, asbestos, anti-fouling paints, heavy metals, PCBs, household hazardous waste, sewage, etc. In addition, as vessels deteriorate they become sources of debris that washes onto the shore or remain a water hazard interfering with aquatic and marine life. Finally, vessels are typically abandoned on or very near shorelines where the pollutants and debris can impact water quality and present attractive nuisances for additional dumping from the shore. Marinas and marine related businesses that have discontinued operations also leave sunken docks, metal pilings, cranes, barges and industrial engines that become illegal solid waste disposal sites and pose a navigational hazard to boaters.

The California Department of Boating and Waterways, recognizing this issue and the significant fiscal burden imposed on local agencies statewide, created the Abandoned Watercraft Abatement Program (AWAP) in 1997. The AWAP funding comes from registration fees on recreational boats, and the funding is therefore restricted to abatement projects involving recreational boats. Thus, AWAP funds cannot be used to remove barges, marine debris, or abandoned commercial boats, which are boats/ships registered in California as vessels involved in commercial enterprises, boats documents by the U.S. Coast Guard as commercial boats either from California or other states, and all boats with out of country documentation. While the U.S. Coast Guard does have immediate resources available to deal with vessels that present an environmental threat from the potential or actual discharge of hazardous pollutants to the watercourse, the resources for removing barges, marine debris or commercial vessels is very limited due to federal policies and regulations. Likewise, there is no vessel-related funding available to remove abandoned materials related to the marine industries. There is an ongoing series of meetings between federal, state, and local agencies to identify and implement a program and funding

source for abatement of commercial marine vessels, but the issue remains unresolved. CalRecycle has successfully partnered with the United States Environmental Protection Agency on a vessel and marine debris pilot project and will be attempting to develop another joint task force with local and federal partners.

Proposed Remediation Pilot Project: The Program was requested by the Sacramento County Sheriff Marine Unit to remove up to 11 abandoned vessel sites along the waters of the Sacramento River. In addition, the California State Lands Commission has requested assistance in removing the ferry "San Diego," which is identified as Site A below and is a derelict vessel that has been abandoned on submerged lands in the San Joaquin River in Solano County. The Program, the Sacramento County Sheriff Marine Unit, and the State Lands Commission propose a joint venture to remove the abandoned vessels and marine debris at specific along the abovementioned waterways to prevent further environmental degradation.

On September 15, 2011, CalRecycle requested assistance in this joint venture from the United States Coast Guard (USCG), District 11, which is the designated federal agency responsible for these inland waterways and has federal jurisdiction for all pollution releases. Project tasks that the USCG may be able to assist with include raising sunken vessels, assessing vessels for hazardous materials, removal and disposal of hazardous materials, and/or installation of spill prevention and containment measures. All parties are hopeful that the USGC will be able to participate in a joint response to combine and increase available resources for this and future potential projects. CalRecycle's request for assistance is still under consideration by the USCG as of the date of this document was prepared.

The engineer's cost estimate for CalRecycle is \$545,000, or \$600,000 with an approximate 10 percent contingency. The Sacramento County Sheriff will be handling all the adjudication and cost recovery process and providing logistical and operational support to the task force for the 11 sites on the Sacramento River. With respect to the ferry "San Diego," the State Lands Commission has determined it is legally abandoned and the party legally responsible does not have practical or financial ability to remove it.

In an effort to address the timely remediation of the sites before the onset of winter with the higher river flows and to meet scheduling requirements for the cleanup of some of the sites the task force is proposing removal action at six to seven of the twelve sites initially. If and when the USCG is able to participate in the funding the assessment of and removal of hazardous materials on the abandoned vessels, then all twelve sites will be targeted. The proposed sites in order of priority and cleanup are as follows:

Site A

Location: Latitude 38° 5'2.37" N / Longitude 121° 44'1.92" W

Description: One abandoned ferry named "San Diego." Assess and remove hazardous materials, oil, and asbestos. Transport to staging for ultimate disposal.

Site B

Location: Latitude 38° 3'33.17" N / Longitude 121°47'13.20" W

Description: One abandoned vessel. Provide containment booms and assess and remove hazardous materials, oil, and asbestos. Remove vessel for disposal.

Site C

Location: Latitude 38° 6'26.47"N / Longitude 121°36'52.03"W

Description: Three abandoned vessels. Assess and remove hazardous materials, fuels, and asbestos. Remove vessels for disposal.

Site D

Location: Latitude 38° 6'16.01" N / Longitude 121°35'38.26" W

Description: Abandoned barge and debris. Assess and remove hazardous materials. Remove vessel and debris for disposal.

Site E

Location: Latitude 38°36'0.54" N / Longitude 121°32'32.24" W

Description: One abandoned vessel. Assess and remove hazardous materials, fuels, and asbestos. Remove vessel for disposal.

Site F

Location: Latitude 38° 6'28.44" N / Longitude 121°36'46.94" W

Description: Four abandoned vessels. Raise vessels, assess and remove hazardous materials. Transport to staging for ultimate disposal.

Site G

Location: Latitude 38° 6'24.44" N / Longitude 121°36'35.95" W

Description: Two abandoned vessels. Assess and remove hazardous materials, fuels, and asbestos. Remove vessels for disposal.

Site H

Location: Latitude 38° 4'51.88"N / Longitude 121°43'52.59"W

Description: One abandoned barge type vessel, 80 percent submerged. Provide containment booms and assess and remove hazardous materials, oil, and asbestos. Remove vessel for disposal.

Site I

Location: Latitude 38° 8'59.06"N / Longitude 121°40'59.55"W

Description: Abandoned marine debris. Assess and remove hazardous materials, fuels, and asbestos. Remove debris for disposal.

Site J

Location: Latitude 38°10'31.65"N / Longitude 121°39'19.23"W

Description: Three abandoned vessels. Raise vessels, assess and remove hazardous materials. Transport to staging for disposal. Remove vessels for disposal.

Site K

Location: Latitude 38° 6'28.44" N / Longitude 121°36'46.94" W

Description: Sunk house boat. Raise vessel and assess and remove hazardous materials. Transport to staging for disposal. Remove vessel for disposal.

Site L

Location: Latitude 38° 6'28.44" N / Longitude 121°36'46.94" W

Description: One abandoned vessel. Raise vessel, assess and remove hazardous materials. Transport to staging for ultimate disposal.

Site Prioritization: Because of the location of the vessels and marine debris in the Delta, and the pollution and public safety threat posed by the vessels, the sites are priority category A1. Priority A1 is a suspected condition of pollution or nuisance from solid waste based on comparison with state minimum standards with significant residential, industrial, park, recreation, or environmentally sensitive areas within 1,000 feet.

California Environmental Quality Act (CEQA): Program staff has reviewed the proposed project and determined that it is categorically exempt per the Class 8 exemption (Title 14, California Code of Regulations, §15308: Actions by Regulatory Agencies for Protection of the Environment). Compliance with CEQA requirements will be made with a Notice of Exemption filed by the Program staff.

Enforcement Actions and Cost Recovery: Based on discussion with the Department's State and Local Illegal Dumping Enforcement Task Force, abandoned vessels in public waters of the state are a subset of the overall state illegal dumping problem. In 1997 the Board approved a cleanup project under the Program that was completed to remove abandoned vessels impacting Redwood Creek in San Mateo County. In November 2009, the Board (CalRecycle soon thereafter) approved a pilot project under the Program that was completed to remove abandoned vessels impacting Contra Costa County. In December 2010 and April 2011, CalRecycle approved pilot projects under the Program that were completed to remove abandoned vessels impacting Sonoma County in Bodega Bay and the Petaluma River.

The Program addresses cleanup of solid waste disposal and codisposal sites, in accordance with Public Resources Code (PRC) Section 48020(2)(b). Under the Integrated Waste Management Act ("IWMA"), a "disposal site" is defined as "the place, location, tract of land, area, or premises in use, intended to be used, or which has been used for the disposal of solid wastes." (PRC Sec. 40122) The deposition of solid waste into waters of the state is addressed in the Fish and Game (F&G) Code, which makes no site specific delineations but rather collectively refers to the "waters of this state" (F&G Code Secs. 5650 and 5652). Program staff submits that as the abandoned vessels and the solid wastes contained therein are located at discrete locations (i.e., sites) upon submerged lands, these lands constitute disposal sites under the IWMA. Accordingly, the Department has instituted a series of pilot projects to explore the efficacy of utilizing Program resources for these types of sites. The submerged lands involved in this situation include the inland waterways of the Delta. Thus in approving this item, the Department would be furthering its endorsement of this interpretation in these pilot projects and continuing to extend the IWMA's jurisdiction to discrete submerged lands upon which solid waste has been deposited. Such an extension may also have implications on enforcement authority (as well as potential jurisdictional issues with other agencies), in that solid waste local enforcement agencies and/or the Department may be considered amongst the agencies with regulatory responsibility for such lands.

The lead agency for enforcement of state laws pertaining to abandoned vessels is local law enforcement (in this case the Sacramento County Sheriff Marine Unit for the sites on the Sacramento River) under Sections 510 through 527 of the Harbors and Navigation Code (HNC). Owners of vessels that are abandoned may be subject to fines and confiscation and salvage or sale by local agencies if not properly removed by the owner. In many cases no responsible parties can be identified through registration or other information. With respect to the illegal disposal sites in this item, the Sacramento County Sheriff Marine Unit has agreed to enforce the HNC to identify vessel owners responsible for the disposal and through prosecution or voluntary efforts effect removal of the vessels by the owners. It is anticipated that no responsible party will be identifiable for the majority of the vessels proposed in this Item. In cases where a

responsible party is identified, Department staff will work with the Sacramento County Sheriff Marine Unit to ensure cost recovery is pursued to the extent practicable from the private owners. Since these sites are located within public lands (i.e., the waters of the State of California), dedicated and maintained for recreational, and ecological purposes for the public benefit, cost recovery need not be pursued against the public agency landowner.

Pursuant to PRC Code Section 48021(c), the County and the State Lands Commission could have applied for a grant from the Department to abate the conditions at these sites; however, the parties have requested a Department-managed cleanup in lieu of a grant, in accordance with PRC Section 48021(b)(2), on the grounds that the parties do not have sufficient financial and staff resources to implement this project in a timely manner and there are no available grant funds at this time.

Fiscal Impacts: The Department-managed project will be performed on a time-and-materials basis under the Program's Northern California remediation contract (DRR10008). The Program's contractor has completed a site visit with Program staff. Preliminary costs for this first phase of the project are estimated at \$600,000, which includes a 10 percent contingency. Actual costs may vary depending on a variety of factors including, but not limited to the quantities and/or types of materials encountered, amount of sediment, market forces, tide, river flows, the required timeframes for cleanup, and competitive bids from subcontractors.

Funding for the project will be derived from previously encumbered funds from the Solid Waste Disposal Trust Fund in the Program's Northern California remediation contract (DRR10008). The contract currently has approximately \$1.3 million in available funds from the Solid Waste Disposal Trust Fund and is adequately funded to complete this project.

Support: Cleanup assistance was requested from the Sacramento County Sheriff, California State Lands Commission, which are working cooperatively with the Department.

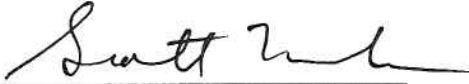
Opposition: Staff has not received any written opposition at the time this document was submitted for approval.

FINDINGS:

On the basis of the information and analysis in this Request for Action, the Department hereby approves this project under the Solid Waste Disposal and Codisposal Site Cleanup Program.

Scott Walker
October 12, 2011
Page 8

In addition, the Department directs staff to prepare and file a Notice of Exemption for the project with the State Clearinghouse.



Scott Walker, Acting Deputy Director
Compliance and Enforcement Division

10/13/2011

Date